

**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:11-cv-00884-GMS
Internal Use Only**

Xerox Corporation v. Arizona Digital Products Inc.
Assigned to: Judge G Murray Snow
Case in other court: New York Western, 6:08-cv-06480
Cause: 28:1338 Trademark Infringement

Date Filed: 05/04/2011
Jury Demand: None
Nature of Suit: 840 Trademark
Jurisdiction: Federal Question

Plaintiff

Xerox Corporation
a New York corporation

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V.

Defendant

Arizona Digital Products Inc.
an Arizona corporation

*Trademark #
see attached
Pgs 6 + 7*

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

XEROX CORPORATION, a New York,
corporation,

Plaintiff,

- against -

ARIZONA DIGITAL PRODUCTS INC., an
Arizona corporation,

Defendant.

COMPLAINT

Civ. Action No.

Xerox Corporation ("Xerox"), for its Complaint in this action, by and through its attorneys Nixon Peabody LLP, alleges and states that:

The Parties

1. Xerox is a corporation organized and existing under the laws of the state of New York with its principal place of business in Connecticut.

2. Arizona Digital Products Inc. ("ADP") is a corporation organized and existing under the laws of the state of Arizona with its principal place of business in Arizona.

The Contracts Between the Parties

3. On or about September 19, 2002, ADP entered into a Business Relationship Agreement ("BRA") with Xerox in Rochester, New York. A copy of that BRA (the "2/04/2002 BRA") is attached as Exhibit A to this Complaint.

4. On or about September 19, 2002, ADP entered into an Authorized Sales Agent Schedule with Xerox in Rochester, New York. A copy of that Sales Agent Schedule is attached as Exhibit B to this Complaint.

5. The BRA and Authorized Sales Agent Schedule permitted ADP to serve as an authorized Xerox Sales Agent.

6. As an authorized Xerox Sales Agent, ADP solicited sales and leases of Xerox products to third-party customers.

7. Effective January of 2006, pursuant to the terms of the 2/04/2002 BRA, ADP entered into a revised form of BRA with Xerox in Rochester, New York, as modified by an Amendment to Business Relationship Agreement dated by ADP as of September 29, 2005. A copy of that Amendment to Business Relationship Agreement is attached as Exhibit C to this Complaint.

8. The revised form of ADP's BRA effective in January, 2006, as amended by its Amendment to Business Relationship Agreement, appears in a conformed form of BRA (the "12/17/05 BRA"). A copy of the 12/17/05 BRA is attached as Exhibit D to this Complaint.

9. Section 3.1 of the 12/17/05 BRA between ADP and Xerox provides, in part, that "use of the Xerox name and trademarks shall conform to guidelines published by Xerox. Business Associate [ADP] shall not refer to itself by any term or in any manner that is inconsistent with Business Associate's true status or which may be misleading to End Users."

10. Section 3.3 of the 12/17/05 BRA between ADP and Xerox provides, in part, that:

Any trademarks, logos, trade names, and identifying slogans affixed by Xerox to any Product (or to accompanying labels, containers, or cartons), whether or not registered, are the exclusive or licensed property of Xerox and shall not be used by Business Associate except in connection with the advertisement, promotion, and sale of the Products.

3.3.1. Permission to use the trademark "Xerox" and Xerox logos, trade names, or identifying slogans shall terminate upon the expiration or termination of this Agreement. Business Associate shall then immediately cease representing itself as having any relationship with Xerox or as being authorized by Xerox to market the Products and shall cease using the trademarks, trade names, logos, and slogans of Xerox (except those appearing on any units of Product remaining in inventory).

3.3.2. Business Associate shall not use the name "Xerox" as part of its corporate or business name or otherwise suggest that it is owned or controlled by Xerox. Business Associate further agrees not to contest any Xerox trademarks,

logos, or trade names or to use or attempt to register any trademark or trade name that is confusingly similar.

3.3.3. Business Associate shall not deface or remove any Xerox trademark, logo, trade name, or serial number on any Product or its packaging. Business Associate shall not add any mark, name, trademark, logo, or serial number to any Product or its packaging without Xerox'[s] prior written consent.

11. Section 4.3 of the 12/17/05 BRA between ADP and Xerox provides, in part, that ADP "shall maintain its own commercial facility suitable for professionally interacting with End Users and demonstrating Products to End Users."

12. Section 5.1 of the 12/17/05 BRA between ADP and Xerox provides, in part, that:

The conduct of Business Associate [ADP], its employees, and representatives shall conform to the highest ethical standards and shall reflect favorably on the good name and reputation of Xerox. Any failure of Business Associate, its employees, or representatives to conduct themselves in this manner as reasonably determined by Xerox shall be grounds for immediate termination of this Agreement as well as any other marketing agreements between Business Associate and Xerox. Breaches of this obligation shall include, but not be limited to, acts involving dishonesty.

Business Associate shall not knowingly sell any damaged or defective Product, shall not make any false or misleading representation, and shall not engage in any unfair trade practice.

13. Section 5.3 of the 12/17/05 BRA between ADP and Xerox provides, in part, that "Business Associate [ADP] and its employees shall comply with all Xerox policies and guidelines made available to Business Associate by Xerox from time to time."

14. Section 5.7 of the 12/17/05 BRA between ADP and Xerox provides, in part, that "Business Associate [ADP] shall comply with all applicable federal, state, and local laws and regulations."

15. Section 6.8 of the 12/17/05 BRA between ADP and Xerox provides, in part, that:

Upon termination (including any non-renewal) of this Agreement or any Schedule hereunder, Business Associate [ADP] shall return to Xerox in a commercially reasonable

manner all associated Xerox property and materials (including any Xerox Confidential Information) in its possession or control. Further, upon termination (including any non-renewal) of this Agreement or any Schedule hereunder, Business Associate shall either (i) change or disconnect its business telephone line(s) so that such lines are not used to conduct business that is competitive to Xerox's business or (ii) add a message for a period of one (1) year to such line(s) providing callers with new telephone numbers to reach their new local Xerox representative, and Business Associate shall advise Xerox in writing within ten (10) days of such termination as to whether it has elected to implement option (i) or (ii) above.

16. The Xerox North American Agent Organization, headquartered in Rochester, New York, has primary responsibility for entering into and administering BRAs, including the BRAs with ADP.

ADP's Purchases of Goods from Xerox

17. Paragraph 5.4 of the 12/17/05 BRA between ADP and Xerox provides, in part, that ADP "shall pay all amounts owed to Xerox as they become due, whether these payments are owed pursuant to this Agreement or any other transaction between the parties."

18. From time to time ADP engaged in transactions with Xerox by purchasing goods from Xerox.

19. From time to time Xerox sent invoices to ADP requesting payment for such purchases.

20. On or about the dates in the table below, Xerox sent the invoices identified by invoice number in the table below to ADP, requesting payment for purchases by ADP in the amounts identified in the table below.

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
April 30, 2008	102679541	\$85.43
April 30, 2008	102679543	\$76.80
April 30, 2008	102679544	\$201.50
April 30, 2008	102679546	\$74.19
April 30, 2008	102679548	\$390.00
April 30, 2008	102679549	\$75.80
May 3, 2008	102703860	\$116.56
May 3, 2008	102703861	\$118.00

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
May 3, 2008	102703862	\$271.00
May 3, 2008	102703863	\$1704.00
May 3, 2008	102703864	\$118.80
May 6, 2008	102735633	\$392.48
May 6, 2008	102735634	\$1042.00
May 8, 2008	102752358	\$72.00
May 8, 2008	102752359	\$94.25
May 8, 2008	102752360	\$22.20
May 8, 2008	102752361	\$210.60
May 8, 2008	102752362	\$682.28
May 8, 2008	102752363	\$543.00
May 8, 2008	102752364	\$389.00
May 8, 2008	102752365	\$178.20
May 10, 2008	102774824	\$612.44
May 10, 2008	102774825	\$481.60
May 10, 2008	102774826	\$39.68
May 10, 2008	102774827	\$627.00
May 13, 2008	102795747	\$76.80
May 13, 2008	102795748	\$77.00
May 15, 2008	102823612	\$521.28
May 15, 2008	102823613	\$860.00
May 17, 2008	102845693	\$129.00
May 17, 2008	102845694	\$1188.00
May 17, 2008	102845695	\$493.20
May 20, 2008	102860011	\$61.00
May 20, 2008	102892300	\$6.88
May 30, 2008	102967341	\$671.77
May 30, 2008	102967342	\$189.00
June 3, 2008	102990975	\$313.66
June 5, 2008	103013873	\$660.16
June 5, 2008	103013874	\$576.15
June 5, 2008	103013875	\$769.19
June 7, 2008	103037165	\$75.90
June 7, 2008	103037166	\$184.63
June 7, 2008	103037167	\$347.94
June 7, 2008	103037168	\$491.73
June 7, 2008	103037169	\$91.60
June 12, 2008	103085848	\$44.49
June 12, 2008	103085849	\$84.75
June 12, 2008	103085850	\$422.00
June 12, 2008	103085851	\$286.93
June 12, 2008	103085853	\$214.32
June 14, 2008	103114796	\$94.75
June 14, 2008	103114797	\$533.94
June 14, 2008	103114798	\$138.68
June 14, 2008	103114799	\$411.00

<u>Date</u>	<u>Invoice No.</u>	<u>Amount</u>
June 19, 2008	103152513	\$45.70
June 21, 2008	103190831	\$968.34
June 21, 2008	103190832	\$423.22
June 26, 2008	103242466	\$230.40
June 26, 2008	103242467	\$258.70
June 26, 2008	103242468	\$57.00
June 26, 2008	103242469	\$508.13
June 28, 2008	103259712	\$42.90
June 28, 2008	103259713	\$293.60
June 28, 2008	103259715	\$3374.88
July 3, 2008	103285174	\$537.00
July 3, 2008	103285175	\$85.76
July 3, 2008	103285176	\$325.00
July 5, 2008	103311770	\$29.93
July 10, 2008	103342108	\$59.86
		\$25,874.98

21. The total amount of the invoices identified in the table in paragraph 20 above is \$25,874.98.

Xerox's Trademarks

22. Xerox is the owner of the following trademarks and service marks, as well as numerous others ("the Xerox Marks") which are either registered on the principal register of the United States Patent and Trademark Office or are pending applications for registration in the U.S. Patent and Trademark Office:

<u>Serial No.</u>	<u>Reg. No.</u>	<u>Trademark</u>	<u>Class</u>
78/976,876	3,102,339	XEROX MAKES YOUR WORK. . .FLOW	42
78/726,364	3,299,372	XEROX BUSINESS PLUS	16
78/723,575	3,133,082	XEROX NUVERA	09
78/723,526	3,360,565	XEROX PREMIUM DIGITAL CARBONLESS	16
78/672,775	3,200,714	XEROX PROFITACCELERATOR	35, 41, 42
78/432,424	3,149,594	XEROX VALUE ASSURANCE PROCESS	35, 42
78/082,062	2,768,136	XEROX INTELLIGENT BARCODE UTILITY	09
77/207,364	3,448,081	XEROX CAPITAL SERVICES	35, 36
77/323,723	Not yet issued	XEROX EXTENSIBLE INTERFACE PLATFORM	09
77/323,685	Not yet issued	XEROX SECURE ACCESS UNIFIED ID SYSTEM	09
77/143,456	Not yet	XEROX HIGH YIELD BUSINESS PAPER	16

<u>Serial No.</u>	<u>Reg. No.</u>	<u>Trademark</u>	<u>Class</u>
	issued		
76/342,861	2,624,769	VIA XEROX*	39
76/293,929	2,717,085	PRINTING INNOVATION WITH XEROX IMAGING AWARDS*	41
75/494,539	2,478,334	XEROX CONNECT*	37, 42
75/240,653	2,232,757	XEROX PROFESSIONAL DOCUMENT SERVICES*	35
75/240,649	2,193,171	XEROX SCAN MANAGER*	09
75/172,122	2,075,858	XEROX*	25
74/697,097	2,091,852	THE XEROX COMPANY STORE*	42
74/121,258	1,662,340	XEROX*	09
74/104,494	1,661,698	XEROX*	16
73/023,683	1,010,557	XEROX*	35
73/019,341	1,008,036	XEROX*	37, 42
73/007,171	1,000,990	XEROX*	09
72/410,220	957,267	XEROX*	09
72/363,474	916,047	XEROX*	41
71/636,289	580,296	XEROX*	03
71/636,288	576,118	XEROX*	01
71/565,488	525,717	XEROX*	16

23. The registrations in the table in paragraph 17 are valid and subsisting and constitute *prima facie* evidence of Xerox's exclusive rights to use the relevant Xerox marks on and in connection with the goods and services recited in the registrations. Copies of these registrations are attached as Exhibit E to this Complaint.

24. All of the registrations marked with asterisks in the table in paragraph 17 above are incontestable in accordance with 15 U.S.C. §§ 1065 and 1115(b) and constitute conclusive evidence of Xerox's exclusive rights to use the relevant Xerox marks in connection with the goods and services recited in the registrations.

25. Before and after Xerox entered into any BRA with ADP, Xerox expended time, effort, and money in the promotion and advertisement of its goods and services sold and offered for sale under the Xerox Marks.

26. As a result of widespread and continuous use, promotion, and advertisement, the Xerox Marks have become famous, distinctive, and widely recognized as identifying Xerox as the source of a wide variety of goods and services.

27. The Xerox Marks distinguish Xerox's products and services from those of others, including competitors of Xerox.

28. Persons who hold themselves out as Xerox Sales Agents or Dealers, but who are not authorized Xerox Sales Agents or Dealers, cause customers and potential customers to believe that they are acquiring or being offered Xerox products and services governed by Xerox's high quality control standards and supported by Xerox's customer support services when, in fact, they are not.

29. Customers who buy products or services from persons who hold themselves out as Xerox Sales Agents or Dealers, but who are not authorized Xerox Sales Agents or Dealers, may end up with products that are outdated, incomplete, or otherwise defective and as to which the supposed Xerox Sales Agent or Dealer may not provide the post-sale service and maintenance, or the access to post-sale maintenance and service, available from or through authorized Xerox Sales Agents or Dealers.

ADP's Misuse of Demonstration Equipment

30. To assist in its obligation under the 12/17/05 BRA to "demonstrate[e] Products to End Users", ADP acquired from Xerox a DocuColor 260 color copier, mainframe serial number DRB 131355 and controller serial number ERB 069371 (the "Demonstration Equipment").

31. The Demonstration Equipment was a "demonstration unit" for purposes of ADP's Sales Agent Schedule with Xerox.

32. Pursuant to Section 2.4.1 of ADP's Sales Agent Schedule with Xerox,

Demonstration units are the property of Xerox and shall be returned to Xerox upon request. Agent [ADP] shall use such units exclusively for End User demonstration purposes in accordance with guidelines published by Xerox. Agent shall maintain a log of the location and usage of demonstration units.

33. At all relevant times, ADP represented to Xerox that its acquisition of the Demonstration Equipment from Xerox was solely to demonstrate Products to End Users.

34. At all relevant times, the Demonstration Equipment remained the property of Xerox.

35. At some point prior to June 26, 2008, ADP began to operate a commercial print shop, under the name Printing Solutions, at ADP's location at 4600 Shea Boulevard in Phoenix, Arizona.

36. ADP, under the name Printing Solutions, sold copies and other printing services to customers for money.

37. ADP used the Demonstration Equipment to make copies sold by it, under the name Printing Solutions, to customers.

ADP's Theft of Consumable Supplies

38. Many Xerox customers, including customers which ADP had serviced as an authorized Xerox Sales Agent, choose to acquire Xerox equipment under a program where Xerox provides consumable supplies, including print cartridges, without separate charge to such customers (the "Supply Program").

39. Under the terms of the Supply Program, the consumable supplies obtained by customers remain the property of Xerox except to the extent of the portion of such supplies actually consumed in the process of operation of the Xerox equipment of that customer.

40. Upon information and belief, ADP went to Xerox customer locations and, without the knowledge of such customers, took Xerox consumable supplies for its own use.

41. Upon information and belief, ADP went to Xerox customer locations and, with the knowledge of such customers, took Xerox consumable supplies for its own use, telling such customers that Xerox would simply replace those supplies for them.

42. Upon information and belief, ADP went to Xerox customers who were terminating their relationship with Xerox, acquired Xerox consumable supplies from such former customers, and resold them to or through an Internet vendor.

ADP's Trademark Infringement and Breach of Its Trademark Obligations Under the BRA

43. On or about June 26, 2008, Xerox terminated ADP's BRA and its role as an authorized Xerox Sales Agent. A copy of a June 26, 2008 letter from Xerox to ADP notifying ADP of its termination as an Authorized Xerox Sales Agent is attached as Exhibit F to this Complaint. A copy of a June 26, 2008 letter from Xerox to ADP notifying ADP of the termination of ADP's 12/17/05 BRA is attached as Exhibit G to this Complaint.

44. Before termination of its BRA by Xerox, ADP's business telephone number was (480) 429-0201.

45. After termination of its BRA by Xerox, ADP continued to use its same business telephone number and did not add a message providing callers with new telephone numbers to reach their new Xerox representative.

46. After termination of its BRA by Xerox, ADP continued to have signage on its premises indicating that it was an authorized Xerox Sales Agent.

47. After termination of its BRA by Xerox, ADP continued to state on its website, www.arizonadigital.com that:

Our Xerox Partnership

Xerox cutting-edge technology enables Arizona Digital Products to offer new productive solutions to customers, from large businesses to small companies. They print, copy, scan, fax and email like no other. Saving time and money. That's a dramatic improvement in technology - and something that is in demand by businesses of all sizes. Another huge focus is that of making the producing of color documents affordable for all offices in the valley. Due to the fact Arizona Digital Products has a full line-up of digital products not only on display but also integrated into a network, business people are invited to stop in at the showroom for a demonstration. Not to be overshadowed by a long list of award winning products, Xerox service sets us apart from our competition, including Total Satisfaction that is unrivaled in the industry.

Let us show you why 90% of Fortune 500 companies now rely on the speed and efficiency of Xerox systems. There is a new way to look at Xerox.

Call us today at 480.429.0201

* * *

Xerox Technical Support

Networking installation and training is provided on all new Xerox equipment by our analyst / trainer. Support for our products can also be obtained from the Xerox E-Support Centre. The Xerox E-Support Centre provides the latest print drivers, solutions to common problems, and product documentation.

If you still would like analyst or training services, please click here to email a service request. Billable service charges will be applied on a per hour basis.

A copy of a webpage screen shot made on or about August 18, 2008 containing this content is attached as Exhibit H to this Complaint.

48. On or about July 25, 2008, Xerox demanded that ADP cease use of the trademark "Xerox" and Xerox logos, trade names, or identifying slogans; that ADP cease the use of Xerox confidential information and Xerox property, and that ADP change its telephone number or add the message required by ADP's 12/17/05 BRA. A copy of this July 25, 2008 letter is attached as Exhibit I to this Complaint.

49. Despite the demands in its July 25, 2008 letter to ADP, Xerox never received in response any written assurances from ADP that it had complied with its obligations and Xerox's demands.

50. Upon information and belief, ADP continued to breach its trademark obligations to Xerox under the 12/17/05 BRA after the July 25, 2008 letter from Xerox.

~~51. Upon information and belief, ADP continued to infringe the Xerox Marks~~
after the July 25, 2008 letter from Xerox.

Jurisdiction and Venue

52. The amount in controversy in this action exceeds \$75,000.

53. Subject matter jurisdiction over this action is proper in this Court pursuant to 28 U.S.C. § 1332 because Xerox and ADP are citizens of different states.

54. Subject matter jurisdiction over this action is proper in this Court pursuant to 28 U.S.C. § 1331 because claims by Xerox against ADP arise under the laws of the United States.

55. Subject matter jurisdiction over this action is proper in this Court pursuant to 28 U.S.C. § 1338 because claims by Xerox against ADP arise under an Act of Congress relating to trademarks.

56. Subject matter jurisdiction over this action is proper in this Court pursuant to 28 U.S.C. § 1367 because claims by Xerox against ADP are so related to claims in this action within the original jurisdiction of this Court that they form part of the same case or controversy under Article III of the United States Constitution.

57. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because ADP is subject to personal jurisdiction in this District.

58. ADP is subject to personal jurisdiction in this District because it transacted business in Rochester, New York.

59. ADP is subject to personal jurisdiction in this District because it committed a tortious act without the state of New York causing injury to Xerox in Rochester, New York; it expected, or reasonably should have expected, that its act would have consequences in New York; and it derives substantial revenue from interstate or international commerce.

FIRST CAUSE OF ACTION
(For Breach of Contract)

60. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

61. To date, ADP has not paid the full amount of the invoices identified in the table in paragraph 20 above.

62. ADP's failure to pay the outstanding balance on the invoices identified in the table in paragraph 20 above is a breach of Paragraph 5.4 of the 12/17/05 BRA between ADP and Xerox.

63. ADP's breach of the 12/17/05 BRA has damaged Xerox in an amount to be proved at trial.

SECOND CAUSE OF ACTION
(For Conversion)

64. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

65. The Demonstration Equipment consisted of goods acquired by ADP from Xerox.

66. By using the Demonstration Equipment to make copies sold by it under the name Printing Solutions, ADP illegally converted the property of Xerox to ADP's own use.

67. ADP's conversion of the Demonstration Equipment has damaged Xerox in an amount to be proved at trial.

THIRD CAUSE OF ACTION
(For Conversion)

68. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

69. By taking, with or without the knowledge of the Xerox customers
involved, Xerox consumable supplies made available to Xerox customers under the Supply Program and using them for ADP's own purposes, ADP converted the property of Xerox to ADP's own use.

70. ADP's conversion of Xerox consumable supplies has damaged Xerox in an amount to be proved at trial.

FOURTH CAUSE OF ACTION
(For Conversion)

71. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

72. By acquiring Xerox consumable supplies made available to customers under the Supply Program from Xerox customers terminating their relationship with Xerox, and then selling those consumable supplies to or through an Internet vendor, ADP illegally converted the property of Xerox to ADP's own use.

73. ADP's conversion of Xerox consumable supplies has damaged Xerox in an amount to be proved at trial.

FIFTH CAUSE OF ACTION
(For Breach of Contract)

74. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

75. The Demonstration Equipment consisted of goods acquired by ADP from Xerox.

76. By using the Demonstration Equipment to make copies sold by it under the name Printing Solutions, ADP breached its obligations under its 12/17/05 BRA.

77. ADP's breach of its obligations with respect to the Demonstration Equipment has damaged Xerox in an amount to be proved at trial.

SIXTH CAUSE OF ACTION
(For Breach of Contract)

78. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

79. ADP breached its trademark obligations under its 12/17/05 BRA by continuing to use and display one or more of the Xerox Marks in its signage, advertising, or website, and despite due demand by Xerox that ADP cease its use of the Xerox Marks after termination of the BRA.

80. ADP breached its trademark obligations under its 12/17/05 BRA by continuing to hold itself out through the Xerox Marks as an authorized Xerox Sales Agent after termination of the BRA.

81. ADP breached its trademark obligations under its 12/17/05 BRA by failing to change or disconnect its business telephone line or lines, or to add a message providing callers with new telephone numbers to reach their new Xerox representative, after termination of the BRA.

82. ADP's breach of its trademark obligations under its 12/17/05 BRA to change or disconnect its business telephone line or lines, or to add a message providing callers with new telephone numbers to reach their new Xerox representative, was part of a scheme by ADP to convert Xerox's property in the form of consumable supplies because, if ADP had not breached this obligation, Xerox customers would not have been misled into allowing ADP to take Xerox consumable supplies from them after ADP's termination as an authorized Xerox Sales Agent.

83. ADP's breach of its trademark obligations under its 12/17/05 BRA to cease use of the trademark "Xerox" and Xerox logos, trade names, or identifying slogans was part of a scheme by ADP to convert Xerox's property in the form of consumable supplies because, if ADP had not breached this obligation, Xerox customers would not have been misled into allowing ADP to take Xerox consumable supplies from them after ADP's termination as an authorized Xerox Sales Agent

84. ADP's breach of its trademark obligations under its 12/17/05 BRA has damaged Xerox in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION
(Federal Trademark Infringement)

85. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

86. Under its BRA with Xerox, ADP was required to conform to strict quality control guidelines designed to ensure that it provided customers with quality products and services and did not tarnish the reputation of Xerox.

87. ADP's obligations with respect to the Xerox Marks under its BRA survived termination of the BRA.

88. ADP is no longer authorized by Xerox to use any Xerox Marks.

89. ADP is no longer part of Xerox's warranty and service program.

90. After termination of its BRA, ADP continued to use the Xerox Marks and to hold itself out to the public as an authorized Xerox Sales Agent.

91. With actual and constructive knowledge of Xerox's rights in the Xerox Marks, ADP continued to use the Xerox Marks in connection with its business without authorization from Xerox in a manner which created a likelihood of confusion, mistake, and deception as to the source or sponsorship of ADP's goods and services, and its business in general, and diluted the distinctive quality of those Xerox Marks.

92. ADP continued to use the Xerox Marks with the intent to trade on Xerox's reputation and goodwill, to hold itself out to the public as authorized by Xerox, which it was not, and to pass off the products and services then being provided by ADP as originating with or authorized by Xerox, which they were not.

93. On information and belief, after termination of its BRA by Xerox, ADP began selling document reproduction and handling equipment manufactured by a company or companies other than Xerox.

94. By continuing to use Xerox Marks after termination of its BRA by Xerox, ADP capitalized on customers' initial interest confusion in thinking that they could still purchase Xerox equipment, services, or supplies from ADP, when this was not the case.

95. Due to ADP's unauthorized use of the Xerox Marks, purchasers and prospective purchasers of ADP's goods or services were confused into believing, contrary to fact, that ADP's goods and services were authorized by Xerox, that ADP was licensed or otherwise sponsored by or associated with Xerox, that ADP was an authorized Xerox sales agent, or that the products they purchased were backed by Xerox warranties and service.

96. The acts and failures to act of ADP were willful.

97. ADP's acts diluted the distinctive quality of the Xerox Marks.

98. ADP's conduct diluted the ability of the Xerox Marks to function as indicators of goods for which Xerox is the true source.

99. As a result of the acts and failures to act of ADP, Xerox has suffered irreparable injury to its reputation and goodwill.

100. As a result of the acts and failures to act of ADP, Xerox has suffered injuries compensable in damages.

101. ADP's continued use in commerce of the Xerox Marks after termination of its BRA created a likelihood of confusion and mistake and deceived the public as to the source or origin of the goods and services offered by ADP through the Xerox Marks and constituted trademark infringement in violation of Sections 32 through 36 of the Lanham Act, 15 U.S.C. §§ 1114-18.

102. ADP's acts of trademark infringement have damaged Xerox in an amount to be proved at trial.

103. To the extent that ADP's acts of trademark infringement are continuing, or threaten to be continued by ADP, Xerox is entitled to an injunction precluding such acts.

EIGHTH CAUSE OF ACTION
(Federal Unfair Competition)

104. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

105. ADP's continued use of the Xerox Marks in commerce after termination of its BRA had a tendency to deceive or confuse consumers into believing that some or all of ADP's goods and services originated with, were authorized or approved by, or were otherwise associated with Xerox, that ADP was an authorized Xerox Sales Agent or Dealer, or that ADP's goods and services were back up by Xerox service and warranty programs.

106. Through ADP's continued use of the Xerox Marks in commerce after termination of its BRA, ADP made false, deceptive, and misleading statements constituting false representations and false advertising in connection with goods and service distributed in interstate commerce in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

107. ADP's violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), have damaged Xerox in an amount to be proved at trial.

108. To the extent that ADP's violations of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), are continuing, or threaten to be continued by ADP, Xerox is entitled to an

injunction precluding such acts.

NINTH CAUSE OF ACTION
(Federal Trademark Dilution)

109. Xerox repeats and realleges paragraphs 1 through 59 above as if fully set forth below.

110. ADP's continued use of the Xerox Marks in commerce after termination of the BRA diluted the distinctive quality of the Xerox Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)(1) and (2).

111. ADP's violations of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)(1) and (2), Xerox have damaged Xerox in an amount to be proved at trial.

112. To the extent that ADP's violations of violations of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)(1) and (2), are continuing, or threaten to be continued by ADP, Xerox is entitled to an injunction precluding such acts.

WHEREFORE, Xerox asks that this Court enter judgment:

- A. Awarding Xerox damages, in an amount to be proved at trial, against ADP;
- B. Permanently enjoining ADP, to the extent it is continuing, or threatens to continue, to violate Xerox's rights in the Xerox Marks, from such violations;
- C. Directing an accounting of profits made by ADP as a result of its wrongful acts;
- D. Awarding Xerox trebled damages pursuant to 15 U.S.C. § 1117;
- E. Awarding Xerox its costs, disbursements, and reasonable attorneys' fees

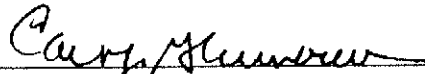
in this Complaint; and

F. Granting such other and further relief as the Court deems just and proper.

Dated: October 23, 2008
Rochester, New York

Respectfully submitted,

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